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PART II—Section 2

Bills and Reports of Select Committees on Bills

PARLIAMENT OF INDIA

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The following Bill was introduced in Parliament on the 5th February, 1951:—

BILL No. 1 OF 1951

A Bill further to amend the Preventive Detention Act, 1950.

BE it enacted by Parliament as follows:—

1. Short title.—This Act may be called the Preventive Detention (Amendment) Act, 1951.

2. Amendment of section 1, Act IV of 1950.—In sub-section (3) of section 1 of the Preventive Detention Act, 1950 (hereinafter referred to as "the said Act"), for the figures "1951" the figures "1952" shall be substituted.

3. Amendment of section 2, Act IV of 1950.—In section 2 of the said Act,—

(a) the word "and" at the end of clause (a) shall be omitted, and

(b) after clause (b), the following clause shall be inserted, namely:—

'(c) "appropriate Government" means, as respects a detention order made by the Central Government or a person detained under such order, the Central Government, and as respects a detention order made by a State Government or by an officer subordinate to a State Government or as respects a person detained under such order, the State Government.'

4. Amendment of section 3, Act IV of 1950.—In sub-section (2) of section 3 of the said Act, for clauses (c), (d) and (e), the following clauses shall be substituted, namely:—

"(c) the Commissioner of Police for Bombay, Calcutta, Madras or Hyderabad;

(d) Collectors in the State of Hyderabad".

5. Insertion of new section 3A in Act IV of 1950.—After section 3 of the said Act, the following section shall be inserted, namely:—

“3A. *Execution of detention orders.*—A detention order may be executed at any place in India in the manner provided for the execution of warrants by any law for the time being in force.”

6. Substitution of new sections for sections 4 and 5, Act IV of 1950.—For sections 4 and 5 of the said Act, the following sections shall be substituted, namely:—

“4. *Power to regulate place and conditions of detention.*—Every person in respect of whom a detention order has been made shall be liable—

(a) to be detained in such place and under such conditions, including conditions as to maintenance, discipline and punishment for breaches of discipline, as the appropriate Government may, by general or special order, specify; and

(b) to be removed from one place of detention to another place of detention, whether within the same State or in another State, by order of the appropriate Government:

Provided that no order shall be made by a State Government under clause (b) for the removal of a person from one State to another State except with the consent of the Government of that other State.

5. *Detention orders not to be invalid or inoperative on certain grounds.*—No detention order shall be invalid or inoperative merely by reason—

(a) that the person to be detained thereunder is outside the limits of the territorial jurisdiction of the Government or officer making the order, or

(b) that the place of detention of such person is outside the said limits.”

7. Amendment of section 7, Act IV of 1950.—In sub-section (1) of section 7 of the said Act, for the words “against the order, in a case where such order has been made by the Central Government, to that Government and in a case where it has been made by a State Government or an officer subordinate thereto to the State Government” the words “against the order to the appropriate Government” shall be substituted.

8. Amendment of section 8, Act IV of 1950.—In section 8 of the said Act,—

(i) in sub-section (2), for the word “two” the word “three” shall be substituted; and

(ii) to sub-section (2), the following proviso shall be added, namely:—

“Provided that where, immediately before the commencement of the Preventive Detention (Amendment) Act, 1951, any reference under section 9 is pending before an Advisory Board, such Board may, for the purpose of disposing of that reference only, consist of two persons.”

9. Substitution of new section for section 9, Act IV of 1950.—For section 9 of the said Act, the following section shall be substituted, namely:—

“9. Reference to Advisory Boards.—(1) In every case where a detention order has been made under this Act, the appropriate Government shall, within six weeks from the date specified in sub-section (2) place before an Advisory Board constituted by it under section 8 the grounds on which the order has been made and the representation, if any, made by the person affected by the order, and in case where the order has been made by an officer, also the report made by such officer under sub-section (3) of section 3.

(2) The date referred to in sub-section (1) shall be—

(a) in every case where at the commencement of the Preventive Detention (Amendment) Act, 1951, the person is under detention in pursuance of a detention order made under sub-clause (i) or sub-clause (ii) of clause (a) of sub-section (1) of section 3, the date of commencement of the said Act; and

(b) in every other case the date of detention under the order.”

10. Amendment of section 10, Act IV of 1950.—In section 10 of the said Act,—

(i) for sub-section (1), the following sub-section shall be substituted, namely:—

“(1) The Advisory Board shall, after considering the materials placed before it and, if necessary, after calling for such further information from the appropriate Government or from the person concerned, as it may deem necessary, submit its report to the appropriate Government within ten weeks from the date specified in sub-section (2) of section 9.”;

(ii) after sub-section (2), the following sub-section shall be inserted, namely:—

“(2A) When there is a difference of opinion among the members forming the Advisory Board, the opinion of the majority of such members shall be deemed to be the opinion of the Board.”

11. Substitution of new sections for sections 11 and 12, Act IV of 1950.—For sections 11 and 12 of the said Act, the following sections shall be substituted, namely:—

“11. Action upon the report of Advisory Board.—(1) In any case where the Advisory Board has reported that there is in its opinion sufficient cause for the detention of a person, the appropriate Government may confirm the detention order and continue the detention of the person concerned for such period as it thinks fit.

(2) In any case where the Advisory Board has reported that there is in its opinion no sufficient cause for the detention of the person concerned, the appropriate Government shall revoke the detention order and cause the person to be released.

12. *Validity and duration of detention in certain cases.*—For the avoidance of doubt it is hereby declared that—

(a) every detention order in force at the commencement of the Preventive Detention (Amendment) Act, 1951 shall continue in force and shall have effect as if it had been made under this Act as amended by the Preventive Detention (Amendment) Act, 1951; and

(b) nothing contained in sub-section (3) of section 1 or sub-section (1) of section 12 of this Act as originally enacted shall be deemed to affect the validity or duration of any such order."

12. Insertion of new section 14 in Act IV of 1950.—After section 13 of the said Act, the following section shall be inserted, namely:—

"14. *Temporary release of persons detained.*—(1) The appropriate Government may at any time direct that any person detained in pursuance of a detention order may be released for any specified period either without conditions or upon such conditions specified in the direction as that person accepts, and may at any time cancel his release.

(2) In directing the release of any person under sub-section (1), the appropriate Government may require him to enter into a bond with or without sureties for the due observance of the conditions specified in the direction.

(3) Any person released under sub-section (1) shall surrender himself at the time and place, and to the authority, specified in the order directing his release or cancelling his release, as the case may be.

(4) If any person fails without sufficient cause to surrender himself in the manner specified in sub-section (3), he shall be punishable with imprisonment for a term which may extend to two years or with fine or with both.

(5) If any person released under sub-section (1) fails to fulfil any of the conditions imposed upon him under the said sub-section or in the bond entered into by him, the bond shall be declared to be forfeited and any person bound thereby shall be liable to pay the penalty thereof or to show cause why such penalty should not be levied."

13. Repeal of Act XLVIII of 1949.—The Transfer of Detained Persons Act, 1949, is hereby repealed.

STATEMENT OF OBJECTS AND REASONS.

The Preventive Detention Act, 1950 (IV of 1950) is due to expire on the 1st of April, 1951. Government have, after very careful examination, come to the conclusion that it is necessary to extend its life, for the present, for a period of one year. The primary reason

for the enactment of this legislation was the necessity to protect the country against violent activities organised in secrecy and intended to produce chaos. These activities, though reduced in tempo, have not ceased, and Government consider it essential that the powers conferred by the Preventive Detention Act should be continued. The Act also enables Government to detain persons for reasons connected with the maintenance of essential supplies and services. With the deterioration in the food situation, the need for maintaining such supplies and services has become more pressing than ever.

Opportunity has been taken to liberalise the provisions regarding reference to Advisory Boards. Sections 9 and 12 of the Act which require such reference to be made only in a limited class of cases and provide for review by a judicial officer in the other cases, are sought to be modified so that a reference to Advisory Boards consisting of three persons will be compulsory in *all* cases of preventive detention. It is further proposed to make it clear that no person will be kept under detention unless upon such reference the Advisory Board reports within ten weeks of his detention that there is sufficient cause for detention.

Another important amendment which is proposed in the Bill is an express provision enabling Government to release detained persons on parole. A few other minor amendments of a procedural or formal character are also proposed.

C. RAJAGOPALACHARI.

NEW DELHI;

The 28th January, 1951.

NOTES ON CLAUSES.

Clause 3.—This clause provides a definition of “appropriate Government” for convenience of reference in subsequent sections.

Clause 4.—It is considered unnecessary that Sub-Divisional Magistrates should have the power to issue detention orders. So far as the State of Hyderabad is concerned, the clause seeks to empower Collectors of districts (instead of Civil Administrators) and the Commissioner of Police for Hyderabad City in this behalf.

Clause 5.—This clause is intended to fill a procedural lacuna in the principal Act. The proposed new section prescribes the manner in which detention orders may be executed anywhere in India.

Clause 6.—This clause seeks to amplify sections 4 and 5 of the principal Act. The main provisions of the Transfer of Detained Persons Act, 1949, are incorporated in section 4 [*vide* clause (b) thereof] and that Act is proposed to be repealed by clause 13 of this Bill. The revised section 5 is intended to remove any doubts as to the validity or operative character of a detention order outside the territorial jurisdiction of the officer or authority making the order.

Clause 8.—This clause provides for increasing the number of members of every Advisory Board from two to three. In order to enable the existing Boards to dispose of the references that may be

pending before them on the date on which the amending Act comes into force, a proviso is sought to be added to section 8(2) of the principal Act.

Clause 9.—Section 9 of the principal Act is substantially modified so as to require that all cases of preventive detention should be referred to Advisory Boards, and not, as at present, a specified class of cases. The amendment allows for a period of six weeks from the commencement of the amending Act during which all the excluded cases of detention will have to be referred to Advisory Boards.

Clause 10.—The amendment proposed in sub-clause (i) of this clause is purely formal, and the one proposed in sub-clause (ii) is consequential upon the increase of members of Boards from two to three. It provides that the opinion of the majority will be deemed to be the opinion of the Board.

Clause 11.—Section 11 of the principal Act has been revised to make clear what is now implicit, namely, where the Advisory Board reports that there is no sufficient cause for detention, the person concerned must be released. The existing section 12 is sought to be omitted, since all cases of detention will hereafter have to be referred to Advisory Boards. A new section 12 is proposed to be inserted in order to avoid any doubts as to the continued validity or the extended duration of existing detention orders.

Clause 12.—Difficulties were being experienced in releasing detained persons on parole on humanitarian or other grounds because there was no express provision in the principal Act in this behalf as is to be found in certain State Acts relating to maintenance of public order. This omission is now sought to be rectified.

M. N. KAUL,
Secretary.